

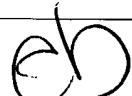


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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/004,757	12/04/2001	David Green	1012.0100	8336
7590	03/10/2004			
David Green 101 Briny Avenue #2909 Pompano Beach, FL 33062			EXAMINER BOYD, JENNIFER A	
			ART UNIT 1771	PAPER NUMBER
DATE MAILED: 03/10/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/004,757	GREEN, DAVID	
	Examiner	Art Unit	
	Jennifer A Boyd	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) 1-12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Response to Amendment

1. The Applicant's Amendments and Accompanying Remarks, filed December 3, 2003, have been entered and have been carefully considered. Claims 13 – 20 are amended, claims 1 – 12 are withdrawn, claims 21 – 28 are added and claims 1 – 28 are pending. In view of Applicant's Amendment to the claims, the Examiner withdraws all previously set forth rejections as detailed in paragraphs 5 – 9 of the previous Office Action mailed July 2, 2003. However, after an updated search, the Examiner has found additional art that renders the invention as currently claimed unpatentable for reasons herein below.

Election/Restrictions

2. Applicant's election of Group II in the response dated December 3, 2003 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

3. An examination of this application reveals that applicant is unfamiliar with patent prosecution procedure. While an inventor may prosecute the application, lack of skill in this field usually acts as a liability in affording the maximum protection for the invention disclosed. Applicant is advised to secure the services of a registered patent attorney or agent to prosecute the application, since the value of a patent is largely dependent upon skilled preparation and prosecution. The Office cannot aid in selecting an attorney or agent.

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4. Applicant is advised of the availability of the publication "Attorneys and Agents Registered to Practice Before the U.S. Patent and Trademark Office." This publication is for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 13 – 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hochwalt (US 4,035,845).

Hochwalt is directed to a helmet for flight personnel (Abstract).

As to claim 13, Hochwalt teaches *helmet 10 comprising a custom-molded rigid liner member 16, a penetration resistant mid-liner 18 and an outer cover 20* (column 2, lines 5 – 15). See Figure 3. The *penetration resistant mid-liner 18* comprises a layer of fabric saturated with an epoxy binder (column 2, lines 24 – 31). The Examiner equates the *penetration resistant mid-liner 18* to Applicant's "clothing impregnated with decorative epoxy resin". Hochwalt discloses the claimed invention except for that the fabric used in the *penetration resistant mid-liner 18* is an article of used clothing. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use an article of used clothing for the fabric of the *penetration resistant mid-liner 18*, since it has been held to be within the general skill of a worker in the art

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to select a known material on the basis of its suitability for the intended use as a matter of design choice. *In re Leshin*, 125 USPQ 416. In the present invention, one would have been motivated to use an article of used clothing for environmental reasons such as reducing landfill waste.

As to claims 14 and 15, although Hochwalt does not explicitly teach the claimed properties of the polyurethane coating resin as being substantially clear as required by claim 14 and glossy as required by claim 15, it is reasonable to presume that polyurethane coating resin as being substantially clear as required by claim 14 and glossy as required by claim 15 is inherent to Parker. Support for said presumption is found in the use of like materials (i.e. epoxy resin) which would result in the claimed properties. The burden is upon the Applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 594. In addition, the presently claimed property of polyurethane coating resin as being substantially clear as required by claim 14 and glossy as required by claim 15 would obviously have been present once the Hochwalt product is provided. Note *In re Best*, 195 USPQ at 433, footnote 4 (CCPA 1977).

As to claim 16, it should be noted that in Figures 1 and 2 it is shown that the *helmet* 10 must have a substantially hollow interior so it can be placed on the user's head.

As to claim 17, Hochwalt teaches *helmet* 10 comprising a *custom-molded rigid liner member* 16, a *penetration resistant mid-liner* 18 and an *outer cover* 20 (column 2, lines 5 – 15). See Figure 3. The *penetration resistant mid-liner* 18 comprises a layer of fabric saturated with an epoxy binder (column 2, lines 24 – 31). After the *penetration resistant mid-liner* 18 is cured, the surface is sanded smooth (column 2, lines 28 – 32). It should be noted that the *penetration resistant mid-liner* 18 would be three-dimensional as shown in Figures 1 – 20. The Examiner

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equates the *penetration resistant mid-liner* 18 to Applicant's "clothing impregnated with decorative epoxy resin".

As to claims 18 and 19, Hochwalt discloses the claimed invention except for that the fabric used in the *penetration resistant mid-liner* 18 is an article of used clothing. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use an article of used clothing for the fabric of the *penetration resistant mid-liner* 18, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of design choice. *In re Leshin*, 125 USPQ 416. In the present invention, one would have been motivated to use an article of used clothing for environmental reasons such as reducing landfill waste.

As to claim 20, it should be noted that in Figures 1 and 2 it is shown that the *helmet* 10 must have a substantially hollow interior so it can be placed on the user's head.

As to claim 21, Hochwalt teaches *helmet* 10 comprising a *custom-molded rigid liner member* 16, a *penetration resistant mid-liner* 18 and an *outer cover* 20 (column 2, lines 5 – 15). See Figure 3. The *custom-molded rigid liner member* 16 is a polyurethane foam liner (column 1, lines 13 – 25 and column 1, lines 34 – 43). The *penetration resistant mid-liner* 18 comprises a layer of fabric saturated with an epoxy binder (column 2, lines 24 – 31). After the *penetration resistant mid-liner* 18 is cured, the surface is sanded smooth (column 2, lines 28 – 32). It should be noted that the *penetration resistant mid-liner* 18 would be three-dimensional as shown in Figures 1 – 20. The Examiner equates the *penetration resistant mid-liner* 18 to Applicant's "clothing impregnated with decorative epoxy resin" and the *custom-molded rigid liner member* 16 to Applicant's "layer of polyurethane adjacent to the decorative resin".

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As to claims 22 and 23, Hochwalt discloses the claimed invention except for that the fabric used in the *penetration resistant mid-liner* 18 is an article of used clothing. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use an article of used clothing for the fabric of the *penetration resistant mid-liner* 18, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of design choice. *In re Leshin*, 125 USPQ 416. In the present invention, one would have been motivated to use an article of used clothing for environmental reasons such as reducing landfill waste.

As to claim 24, it should be noted that in Figures 1 and 2 it is shown that the *helmet* 10 must have a substantially hollow interior so it can be placed on the user's head.

As to claim 25, Hochwalt teaches *helmet* 10 comprising a *custom-molded rigid liner member* 16, a *penetration resistant mid-liner* 18 and an *outer cover* 20 (column 2, lines 5 – 15). See Figure 3. The *custom-molded rigid liner member* 16 is a polyurethane foam liner (column 1, lines 13 – 25 and column 1, lines 34 – 43). The *penetration resistant mid-liner* 18 comprises a layer of fabric saturated with an epoxy binder (column 2, lines 24 – 31). After the *penetration resistant mid-liner* 18 is cured, the surface is sanded smooth (column 2, lines 28 – 32). It should be noted that the *penetration resistant mid-liner* 18 would be three-dimensional as shown in Figures 1 – 20. The Examiner equates the *penetration resistant mid-liner* 18 to Applicant's "clothing impregnated with decorative epoxy resin" and the *custom-molded rigid liner member* 16 to Applicant's "layer of polyurethane immediately adjacent to the decorative resin".

As to claims 26 and 27, Hochwalt discloses the claimed invention except for that the fabric used in the *penetration resistant mid-liner* 18 is an article of used clothing. It would have

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been obvious to one having ordinary skill in the art at the time the invention was made to use an article of used clothing for the fabric of the *penetration resistant mid-liner* 18, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of design choice. *In re Leshin*, 125 USPQ 416. In the present invention, one would have been motivated to use an article of used clothing for environmental reasons such as reducing landfill waste.

As to claim 28, it should be noted that in Figures 1 and 2 it is shown that the *helmet* 10 must have a substantially hollow interior so it can be placed on the user's head.

As to claims 13 - 28, it should be noted that the Examiner has given no patentable weight to "a rigid and waterproof fabric sculpture". Furthermore, it has been held that a recitation with respect to the manner in which a claimed article is intended to be employed does not differentiate the claimed article from a prior art article satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Response to Arguments

7. Applicant's arguments with respect to claims 13 – 28 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Home & Garden, The Atlanta Journal-Constitution discusses a custom-made table made

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from any pair of jeans or pants and shoes. After contacting Artful Living, the distributor of the custom-made tables, it was verified that the jeans are not impregnated or coated with any type of resin unlike the Applicant's present invention.

The website for Webster Craft Manufacturing discusses a product comprising 1 liter of hardener and instructions for making a fabric sculpture. Please note the picture with the caption "Varnished Jeans". The Examiner has contacted the company by e-mail to find out the composition of the hardener material and what process is suggested by the instructions to make the fabric sculpture but has not yet received a response.

9. The Examiner has included a copy of the Applicant's Patent Application Publication for Applicant's records.

10. This action is a **final rejection** and is intended to close the prosecution of this application. Applicant's reply under 37 CFR 1.113 to this action is limited either to an appeal to the Board of Patent Appeals and Interferences or to an amendment complying with the requirements set forth below.

If applicant should desire to appeal any rejection made by the examiner, a Notice of Appeal must be filed within the period for reply identifying the rejected claim or claims appealed. The Notice of Appeal must be accompanied by the required appeal fee.

If applicant should desire to file an amendment, entry of a proposed amendment after final rejection cannot be made as a matter of right unless it merely cancels claims or complies with a formal requirement made earlier. Amendments touching the merits of the application

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which otherwise might not be proper may be admitted upon a showing a good and sufficient reasons why they are necessary and why they were not presented earlier.

A reply under 37 CFR 1.113 to a final rejection must include the appeal from, or cancellation of, each rejected claim. The filing of an amendment after final rejection, whether or not it is entered, does not stop the running of the statutory period for reply to the final rejection unless the examiner holds the claims to be in condition for allowance. Accordingly, if a Notice of Appeal has not been filed properly within the period for reply, or any extension of this period obtained under either 37 CFR 1.136(a) or (b), the application will become abandoned.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer A Boyd whose telephone number is 571-272-1473. The examiner can normally be reached on Monday thru Friday (8:30am - 6:00pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Jennifer Boyd

Jennifer Boyd

February 19, 2004

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